HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Writ petition No. 497 (S/S) 2003

Chandan Lal ... Petitioner

Vs.

State of Uttarakhand and 3 ors.. ... Respondents

Approved for reporting.
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~~Not approved for reporting.~~

Date of Decision 1st March 2007.

Initial of Judge.

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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ petition No. 497 (S/S) 2003

Chandan Lal S/o late Sri Ram Lal,
R/o village Shail, Tehsil and Post Almora,
District Almora. .....Petitioner.

Versus

1. State of Uttarakhand through the Secretary Revenue, Civil Line, Dehradun,
2. Addl. Commissioner, Revenue,
   Circuit Kumaon Division, Nainital,
   District Nainital,
3. Commissioner, Kumaon Division Nainital,
4. District Magistrate/Collector Almora.
   District Almora. .....Respondents.

Sri B.S. Khanka, learned counsel for the petitioner,
Sri N.P. Sah, learned Standing Counsel for the State/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri B.S. Khanka, learned counsel for the petitioner and N.P. Sah, learned Standing Counsel for the State of Uttarakhand/respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

i. Issue a writ, order or direction in the nature of certiorari to quash the impugned compulsory retirement order dated 10.04.2003 and order for stopping one increment dated 10.12.2002 (annexure no. 1 & 10 to the writ petition), passed by the respondent no.4,

ii. Issue a writ, order or direction in the nature of mandamus commanding the respondents or directing them to give promotion to the petitioner on the post of Kanoongo,

iii. Issue any suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case,

iv. Award the cost of petition.

The facts of the case are that the petitioner, after completion of Patwari Training, was appointed as Patwari in the year 1972 and till his retirement, vide order dated 10th April 2002, has worked as Patwari with full satisfaction of respondents.

Contention of the petitioner is that he was compulsorily retired by the respondents arbitrarily and mala-fide. From perusal of the records, it is apparent that the petitioner has alleged mala-fide against the respondents but the District Magistrate who has passed the impugned order has not been made party in his personal capacity. The petitioner has been directed to be retired compulsorily by the District Magistrate, Almora under Rule 56 of the Financial Hand Book Volume II to IV.

Perusal of the record reveals that sometime in the year 2002 one Smt. Roopa Devi came to the petitioner to lodge an F.I.R. against her husband but she was sent back by the petitioner to produce documents in support of her F.I.R. and also to prove prima-facie case against her husband. Departmental Inquiry was conducted by the Sub Divisional Magistrate, Ranikhet and the petitioner was found guilty of the charges. While holding guilty of the charges, the Sub Divisional Magistrate has held that in the Departmental meeting on 14th March 2002, he asked the petitioner why he has not lodged the report of Smt. Roopa Devi, on which the petitioner replied that

she has never approached to him for lodging F.I.R. and thereafter, the petitioner lodged the F.I.R. on back date i.e. on 08.3.2002. From this fact, it is obvious that the petitioner had not lodged the F.I.R. till 14.03.2002, and the same was lodged after 14.03.2002 mentioning the date as 08.03.2002. The District Magistrate, Almora on 12.06.2002 warned the petitioner not to reiterate the mistake again. The petitioner thereafter, was transferred and vide order dated 17.07.2002 he was suspended by the respondents.

Submission of the learned counsel for the petitioner is that the respondent has passed the impugned order mala-fide as they have given warning to the petitioner on 15.06.2002, thereafter he was transferred and again vide order dated 17.07.2002 he was suspended. I do not find any illegality in issuing warnings to the petitioner; on the contrary it appears that the petitioner should have been given punishment. Warning is not a punishment. So far the transfer is concerned, it has been made in a routine course, thus mere making transfer from one place to another mala-fide intension cannot be drawn from the act of respondent. So far the suspension is concerned, it was revoked by the respondents vide order dated 10.12.2002 resulting stoppage of one increment of the petitioner as a punishment. The charges levelled against the petitioner in the suspension order were serious and after holding inquiry, the punishment was awarded to him. The punishment is not, at all, shocking, as such, it cannot be said that the punishment is arbitrary and has been passed by the District Magistrate mala-fide.

Learned counsel for the petitioner has submitted that the punishment order compelling the petitioner to be retired

compulsorily, is somewhat stigmatic. From perusal of the order impugned which is annexure no. 1 to the writ petition, I do not find any word mentioned therein in the order which can be said to be stigmatic. The order impugned is quite simplicitor and has been passed under Rule 56 of the Financial Hand Book volume II to IV. Rule 56 of the Financial Hand Book volume II to IV is reproduced hereunder:-

COMPULSORY RETIREMENT

56 (a)Except as otherwise provided in this Rule, every Government servant other than a Government servant in interior service shall retire from on the afternoon of the last day of the month in which he attains the age of fifty eight years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.

(b). A Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. He must not be retained in service after that date, except in very special circumstances and with sanction of the Government.

(c). Notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of forty-five years or after he has completed qualifying service of twenty years.

(d). ---------

(e). ---------

The respondents have filed counter affidavit. In para-9 of the counter affidavit it is stated by the respondents that after initial appointment of the petitioner in the year 1972, there were many adverse entries in the service records of the petitioner, as he was awarded adverse entries for the year 1992-93, 1993-94, 1995-96, 1996-97 and 2001-2002. However, the petitioner has nowhere stated either in the writ petition, or in the rejoinder affidavit or even in the supplementary affidavit as to whether the adverse entries were communicated to him or not? In case, the adverse entries were communicated to him, whether he had filed appeal against the adverse entries or not?

Learned Standing Counsel has contended that after being compulsory retired; the petitioner has already got all the post retirement dues for which he was entitled.

Rule 56 (a) of the Financial Hand Book volume II to IV permits the appropriate authority to retire any Govt. servant who has attained the age of 50 years after considering the case of the Govt. servant for premature retirement and in case, an employee is found to be lazy or inefficient or against whom serious charges exist or against whom adverse remarks exist in the character roles can be compulsorily retired on attaining the age of 50 years. Opinion of the authority regarding compulsory retirement is a subjective satisfaction, which has to be formed on the basis of entire record of service. The order of compulsory retirement does not amount to punishment, as such, principles of natural justice do not come into play. The High Court under Article 226 of the Constitution of India can interfere in the matter of compulsory retirement, if it is satisfied that the said

order is passed (i) mala-fide (ii) that it is based on no evidence or (iii) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material.

After perusal of record, I do not find any ground available with the petitioner to challenge the impugned order. The petition lacks merit and is liable to be dismissed.

Thus, the petition is dismissed. No order as to costs.

(M.M. Ghildiyal, J.)

March 1, 2007:
NCM: